

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BI-TECH, INC. : CIVIL ACTION
: .
: .
: .
v. : No. 02-CV-3758
: .
WESTCODE, INC. : .

DEFENDANT, WESTCODE, INC.'S MOTION FOR SUMMARY JUDGMENT

AND NOW, for the reasons set forth more fully below and in the Defendant, Westcode, Inc.'s memorandum of law in support of its motion for summary judgment, which is incorporated herein by reference, the Defendant, Westcode, Inc. respectfully requests the entry of judgment in its favor pursuant to Fed.R.Civ.P. 56 dismissing the Plaintiff, Bi-Tech, Inc.'s case with prejudice.

1. The Plaintiff, Bi-Tech, Inc. ("Bi-Tech"), is a corporation incorporated under the laws of the State of New Jersey.
2. Bi-Tech was a manufacturer and assembler of fabricated metal parts.
3. The Defendant, Westcode, Inc. ("Westcode"), provides air conditioning, suspension and door sub-assemblies primarily to the rail car industry.
4. Bi-Tech was a sub-supplier of parts on two of Westcode's jobs.
5. The first job was under the auspices of the New York Transit Authority. Pursuant to purchase order number S2147892, issued on or about October 15, 1999, Bi-Tech was to provide 20 condenser fan assemblies for that job. A true and correct copy of purchase order number S2147892 dated October 15, 1999 is attached hereto as Exhibit "A".

6. Another one of Westcode's jobs was under the auspices of the Bay Area Rapid Transit Authority ("BART"). Pursuant to that job, Westcode was supplying door operator systems, suspension assemblies and heating, ventilation and air conditioning assemblies.

7. Pursuant to purchase order number M0546125, issued on June 15, 1998, Bi-Tech was to provide evaporator covers. A true and correct copy of purchase order number M0546125 dated June 15, 1998 is attached hereto as Exhibit "B".

8. According to paragraph 9 of Bi-Tech's Complaint, the Plaintiff seeks damages totaling \$70,783.00 in connection with the BART purchase order. The majority of that amount (\$61,288.00) represents goods allegedly manufactured by Bi-Tech but whose delivery was not accepted.

9. According to paragraph 13 of Bi-Tech's Complaint, the Plaintiff seeks \$112,210.00 under purchase order S2147892 for lost profits and expenses.

10. Bi-Tech was incorporated in or about 1970.

11. On December 31, 1993, its Certificate of Incorporation was revoked. A true and correct copy of the State of New Jersey Department of Treasury Long Form Standing With Officers and Directors Certificate for Bi-Tech, Inc., dated March 10, 2003 is attached hereto as Exhibit "C".

12. The Certificate of Incorporation for Bi-Tech was revoked for the failure to file and pay for annual reports.

13. Bi-Tech's Certificate of Incorporation has not been reinstated.

14. As a result of the foregoing revocation, Bi-Tech was legally dissolved on December 31, 1993 and had no authority or permission to carry on business other than

business designed at winding up its affairs.

15. The purchase orders set forth above, in particular purchase order numbers S2147892 and M0546125, are, therefore, not enforceable by Bi-Tech and void.

Respectfully submitted,

PHILLIPS & CAMPBELL, P.C.

Patrick C. Campbell, Jr.
ID No. 53350
One Belmont Avenue, Ste. 518
Bala Cynwyd, PA 19004
610/668-4970
Attorneys for Defendant, Westcode, Inc.

Dated: March 18, 2003